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8 *MGM Resorts International and*
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9
10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 MGM RESORTS INTERNATIONAL, a
Delaware corporation, and CITYCENTER
13 LAND, LLC, a Nevada limited liability
corporation,

14 Plaintiffs,

15 v.

16 JOHN DOES 1-2,

17 Defendants.
18

Case No. 2:14-cv-01369-JCM-(NJK)

**ORDER GRANTING
PLAINTIFFS' MOTION
FOR EXTENSION OF TIME**

(Third Request)

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19 Plaintiffs MGM Resorts International and CityCenter Land, LLC ("Plaintiffs") hereby
20 move the Court for entry of an order extending the time for Plaintiffs to file their motion,
21 pursuant to the Court's order dated October 27, 2014, for leave to amend the Complaint to add
22 the true identities of the presently unknown defendants, John Does 1-2.

23 Plaintiffs respectfully request that this deadline be extended from January 28, 2015 to
24 March 31, 2015. This is Plaintiffs' third request for an extension of time.

25 **PRELIMINARY STATEMENT**

26 This is an action to stop the unknown owners of two user accounts on the online photo
27 sharing network www.instagram.com from unlawfully trading on Plaintiffs' well-known,
28 federally registered "MGM" and "VDARA" trademarks by distributing images and comments

1 using the user names “MGM” and “VDARA” – user names that are identical to Plaintiffs’
 2 federally registered “MGM” and “VDARA” trademarks.

3 **STATEMENT OF FACTS**

4 The Complaint was filed on August 21, 2014. (Doc. 1.) On October 26, 2014, Plaintiffs
 5 MGM Resorts International and CityCenter Land, LLC (“Plaintiffs”) moved the Court for leave
 6 to take discovery to determine the identity of unknown Defendants John Does 1 and 2. (Doc. 6.)

7 On October 27, 2014, the Court entered an order granting the motion. (Doc. 7). The
 8 order states, *inter alia*, that, “Plaintiffs will have 30 days (*i.e.*, by November 26, 2014), to
 9 discover the actual names of the Doe Defendants through discovery, and file a request to amend
 10 the complaint to provide the actual names of the Doe Defendants.” (*Id.* at 1, ll. 22-24.)

11 On November 10, 2014, Plaintiffs’ undersigned counsel sent a letter along with
 12 subpoenas directed to Instagram requesting, among other information, documents identifying the
 13 owners of the Instagram accounts “MGM” and “VDARA.” (Doc. 10 at Ex. 1.) Having received
 14 no response from Instagram, on November 25, 2014, Plaintiffs’ counsel caused a copy of the
 15 prior correspondence to be hand delivered to Instagram’s registered agent in California. (*Id.* at
 16 Ex. 2.) Because the deadline set by the Court for discovery was fast approaching and having
 17 received no response from Instagram, Plaintiffs moved and obtained an extension of time to
 18 discover the actual names of the Doe Defendants. (Doc. Nos. 10 and 11.)

19 On December 19, 2014, Instagram responded to the subpoenas asking Plaintiffs’ counsel
 20 to contact Instagram if Plaintiffs still sought the documents listed in the subpoenas. The letter
 21 also lodged various objections to subpoenas. Nonetheless, the letter did indicate that Instagram
 22 “can produce reasonably accessible basic identifying information” A true and correct copy
 23 of the letter from Instagram is attached hereto as Exhibit A. Plaintiffs responded to the letter by
 24 email on December 21, 2014. Plaintiffs confirmed that they still want the documents in the
 25 subpoenas, rebutted the objections, and asked for Instagram to provide responsive documents by
 26 January 8, 2015. A true and correct copy of the response email is attached hereto as Exhibit B.

27 On December 29, 2014, Plaintiffs moved the Court for a second extension of the deadline
 28 to amend the Complaint to provide additional time for Instagram to provide the documents

1 Plaintiff requested, review them, and prepare the appropriate motion to amend the complaint.
 2 (Doc. 12.) The Court granted the motion on December 30, 2014. (Doc. 13.)

3 On Monday, January 12, 2015, Plaintiffs' counsel received a 6-page document
 4 production via email from Instagram. A true and accurate copy of the email and accompanying
 5 documents is attached hereto as Exhibit C. The documents only contain information concerning
 6 the VDARA Instagram user account, not both the VDARA and MGM Instagram user accounts
 7 as Plaintiffs had requested. (*Id.*) In addition, the only information contained in the documents
 8 identifying the purported owner of the VDARA Instagram account is two email addresses:
 9 mariaavila702@aol.com (*id.* at 6) and marilia.rocha@gmail.com (*id.* at 10). In sum, Instagram
 10 has yet to provide any information concerning the identity of the owner of the MGM Instagram
 11 account, and has only provided two emails addresses to identify the owner of the VDARA
 12 Instagram account.

13 Accordingly, Plaintiffs respectfully request that the Court enter an order granting
 14 Plaintiffs an additional sixty (60) days (*i.e.*, until March 29, 2015), to file a motion for leave to
 15 amend the complaint to provide the actual identities of the presently unknown defendants.

16 **LEGAL STANDARD**

17 Rule 6(b) of the Federal Rules of Civil Procedure governs motions seeking to extend the
 18 time by which a party may or must act. The rule states, in relevant part, the following:

19 (b) Extending Time.

20 (1) *In General.* When an act may or must be done within a specified time, the
 21 court may, for good cause, extend the time:

22 (A) with or without motion or notice if the court acts, or if a request is
 23 made, before the original time or its extension expires; or

24 (B) on motion made after the time has expired if the party failed to act
 25 because of excusable neglect.

26 (2) *Exceptions.* A court must not extend the time to act under Rules 50(b) and
 27 (d), 52(b), 59(b), (d), and (e), and 60(b).

27 Fed. R. Civ. P. 6(b).

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1 The good cause standard primarily considers the diligence of the party or parties seeking
2 the extension. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). On
3 the other hand, the United States Supreme Court has set forth four factors that a court must take
4 into account in determining whether neglect is excusable: (1) the danger of prejudice to the
5 opposing party; (2) the length of the delay and its potential impact on the proceedings; (3) the
6 reason for the delay; and (4) whether the movant acted in good faith. *Pioneer Inv. Servs. Co. v.*
7 *Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993).

8 ARGUMENT

9 The Court should grant Plaintiffs an additional thirty (30) days to file their motion to
10 amend the Complaint to add the true identities of presently unknown defendants John Does 1-2
11 because the good cause standard applies and is satisfied here.

12 First, the good cause standard should apply. As set forth above, the good cause standard
13 applies "if a request is made, before the original time or its extension expires." Fed. R. Civ. P.
14 6(b)(1)(A). The current deadline to file a motion for leave to amend the Complaint to add the
15 true identities of the Doe Defendants was January 28, 2015. (*See* Doc. Nos. 12 and 13.)
16 Plaintiffs filed their present motion on January 29, 2015, one day after the January 28, 2015
17 deadline. While Plaintiffs' present motion was filed one day after the deadline, the 1-day delay
18 was the result of an unintentional error on the part of Plaintiffs' counsel. More specifically,
19 Plaintiffs' undersigned believed that the present motion had been drafted and filed by another
20 attorney prior to January 28, 2015, when in fact, it had not. Because this motion was filed the
21 very next day, Plaintiffs submit that the good cause standard should apply.

22 Second, the good cause standard is satisfied here because Plaintiffs have acted diligently
23 to discover the Doe Defendants' identities from Instagram. On November 10, 2014, Plaintiffs'
24 counsel sent a letter along with subpoenas directed to Instagram requesting, among other
25 information, documents identifying the owners of the Instagram accounts "MGM" and
26 "VDARA." Having received no response from Instagram after allowing a reasonable amount of
27 time for compliance, on November 25, 2014, Plaintiffs' counsel caused a copy of the prior
28 correspondence to be hand delivered to Instagram's registered agent in California. Instagram

1 finally responded on December 19, 2014. (Ex. A.) However, rather than provide responsive
2 documents to the subpoenas, Instagram asked Plaintiffs to follow up if they wanted the
3 documents and lodged various objections to the subpoenas. Nonetheless, Instagram indicated
4 that it “can produce reasonably accessible basic identifying information” (*Id.*) Plaintiffs’
5 counsel responded to this letter shortly thereafter, on Sunday, December 21, 2014, and in
6 addition to rebutting the objections presented by Instagram, asked that Instagram provide
7 responsive documents by January 8, 2015. (Ex. B.)

8 Since that time, on Monday, January 12, 2015, Plaintiffs’ counsel received a 6-page
9 document production via email from Instagram. (Ex. C.) The documents only contain
10 information concerning the VDARA Instagram user account, not both the VDARA and MGM
11 Instagram user accounts as Plaintiffs had requested. (*Id.*) In addition, the only information
12 contained in the documents identifying the purported owner of the VDARA Instagram account is
13 two email addresses: mariaavila702@aol.com (*id.* at 6) and marilia.rocha@gmail.com (*id.* at 10).
14 In sum, Instagram has yet to provide any information concerning the identity of the owner of the
15 MGM Instagram account, and has only provided two emails addresses to identify the owner of
16 the VDARA Instagram account. Because of the exceptionally limited information produced by
17 Instagram, Plaintiff must take additional steps to follow-up with Instagram, and must otherwise
18 continue its investigation to identify the owners of the MGM Instagram account, and to more
19 specifically identify the owner of the VDARA Instagram account. In light of the foregoing,
20 Plaintiffs have acted diligently to discover the identities of the Doe Defendants, good cause
21 exists for the requested extension of time, and Plaintiffs’ motion should be granted. *See*
22 *Johnson*, 975 F.2d at 609.

23 Third, Plaintiffs’ motion should be granted even under the excusable neglect standard.
24 There is no prejudice to the defendants. This case is in its infancy and the Defendants have not
25 been conclusively identified, named, or served with the Summons and Complaint. In addition,
26 the length of the delay – 1 day – has not impacted these proceedings in any material way. The
27 reason for the delay, the oversight of Plaintiffs’ counsel, also weighs in favor of granting
28 Plaintiffs’ motion. Finally, Plaintiffs’ have acted in good faith. The 1-day delay was the result

of Plaintiffs' counsel, not Plaintiffs, was innocent, and was immediately corrected by the filing of the present motion. Accordingly, Plaintiffs' motion should be granted even under the excusable neglect standard. *Pioneer Inv. Servs. Co.*, 507 U.S. at 395.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting Plaintiffs an additional sixty (60) days (*i.e.*, until March 29, 2015), to file a motion for leave to amend the complaint to provide the actual identities of the presently unknown defendants.

Dated: this 29th day of January, 2015.

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The Court granted Plaintiffs' motion for "expedited" discovery on October 27, 2015. Docket No. 7. In granting this latest request for an extension, Plaintiffs will have a cumulative period of more than five months in which to discover the Doe Defendants' identities. NO FURTHER EXTENSIONS WILL BE GRANTED.

IT IS SO ORDERED:


UNITED STATES MAGISTRATE JUDGE

DATED: January 30, 2015

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